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IN THE

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO.: 09/735,697

CONF. NO.: 6750

APPLICANT: NOEL LEE

ART UNIT: 2836

FILED: DECEMBER 12, 2000

EXAMINER: DEBERADINIS, ROBERT

CUSTOMER NO.: 24394

DOCKET NO.: P1230

FOR: APPARATUS AND METHOD FOR POWERING MULTIPLE PERIPHERAL
DEVICES FROM A COLOR-CODED CENTRAL POWER SOURCE

MAIL STOP AMENDMENTS

COMMISSIONER FOR PATENTS

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ALEXANDRIA, VA 22313-1450

APPEAL BRIEF

UNDER 35 U.S.C. § 143(a), 37 C.F.R. § 1.192, and 37 C.F.R. § 1.193(b)(2)

To the Commissioner:

This is a Appeal Brief arising from the Final Office Action mailed February 3, 2012.
Notice of Appeal and a Petition for a one (1) Month Extension of time is timely filed with the
requisite fee.

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I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the patent application, Monster Cable Products, Inc., doing business at 455 Valley Drive, Brisbane, California 94005-1209.

II. RELATED APPEALS AND INTERFERENCES

On information and belief, no related appeals or interferences are pending.

III. STATUS OF CLAIMS

This continuation application (US 09/735,697), claiming priority to US 60/070,317, has a very lengthy history dating back over a decade. The current Examiner (Mr. DeBeradinis) began his work in September 2004. The currently pending claims were presented on November 29, 2011. These claims were rejected on February 3, 2012.

IV. STATUS OF AMENDMENTS

No Amendment after Final Rejection has been submitted. The Applicant believes that independent Claims 58 and 63, as filed, fully encompasses all of the inventive features as set forth in the Specification and are allowable, as are dependent claims 59-62 and 64-67.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 58 addresses a method of preventing confusion in users of a multiple outlet power strip having several identical outlets for providing power to a plurality of devices that includes the steps of:

- a. assigning a separate and distinct color code to each outlet for selectively identifying each outlet of said power strip;

- b. assigning to each color-coded outlet a different color from any other such color-coded outlet; and
- c. providing colored indicia adjacent to each color-coded outlet, wherein each indicia comprises a background color identical to its adjacent color-coded outlet.

Independent claim 63 describes an electrical power distribution system comprising:

- a. a housing having a plurality of substantially identical AC power distribution outlets for providing AC electrical power to a plurality of peripheral devices connected thereto; and
- b. a plurality of unique colored areas disposed on or proximate to each outlet, for identifying each outlet and the peripheral device connected to each outlet.

The subject matter of independent claim 58 and 63 is found in figures 2 and 3 of the drawings, and their descriptions.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 58-62 and 63-67 were rejected under 35 USC §103(a) as unpatentable over Dwight, (Des. 401,220) in view of Barna (5,775,935) and further in view of Moss 5,862,774. Applicant asserts that the Examiner has not stated a valid prima facie case of obviousness under Section §103(a).

VII. ARGUMENT

INTRODUCTORY REMARKS

Claims 58-67 are believed to be fully supported by the specification, and are believed to be in allowable form. Alternatively, the claims are believed to be in form for appeal. Thus,

favorable consideration of the present continuation application is respectfully requested in light of these remarks.

With the many possible combinations/permutations of electronic components (e.g., TV, VCR, DVD, etc.) available today, the claimed invention is a system and method of more effectively working with power cords and outlets. Imagine a typical user confronted with the scenario as follows: the power strip is under a bed, desk or behind an entertainment center under dim or no lighting conditions. Plugged into the power strip is a variety of power cords, all connected to different electrical devices. One of the devices needs to be unplugged, while the rest need to remain powered. The consumer sees a tangled mess of cords coming out of the power strip and isn't sure which one to unplug. The options are shutting down the whole system or guessing which plug to pull and taking your chances with potentially significant consequences at stake. This is a fairly routine problem facing many consumers.

Solving these problems, the claimed invention is basically a color-coded plug strip for supplying power to many pieces of electronic equipment. The color coding of the present invention comprises unique colored areas on and surrounding each outlet. Also, a matching colored label is located adjacent to the colored outlet. The colors and labels on the plug strip allow the consumer to easily recognize the connection, even from a distance without having to remember, squint, or trace that connection.

Since the color-coding is applied to a plug strip rather than to a specialized electronic apparatus, the user may connect any peripheral device to any outlet that he or she so chooses. In this way, the present invention allows the consumer to define desired color coding by applying optional color coding stickers.

The method claims according to the present invention include color coded indicia (labels) which allow the consumer to retrofit a prior art plain plug strip or to reassign the colors of the claimed solid color coded plug strip as he/she so desires. The color coded indicia have information (e.g., symbols, numbers, words, or acronyms) printed thereon about many types of consumer electronic equipment, enabling the consumer to easily further identify his electronic connection and the particular electronic component.

The present invention, as defined in the claims, is illustrated in Figures 2 and 3 of the Drawings and is described in the Detailed Description of the Invention beginning on page 6, line

27 of the continuation application. In one embodiment of the invention, the system comprises a housing with a plurality of AC outlet portions C1, C2, C3, C4, C5, ..., CX corresponding to outlet receptacles 23 (a, b, c, d, e, ..., n) for providing AC power to the same plurality of peripheral electrical devices. Each AC outlet housing portion is colored with a first color that is different from another AC outlet housing portion. The indicia elements are, by example, an adhesive-backing type label having a color that matches the corresponding color of the AC outlet housing portion. The indicia elements I_{cx} also comprise identifying information (e.g., words, acronyms, numerals, and symbols) about the peripheral device to be powered.

A. The Examiner Had The Burden of Putting Forth a Prima Facie Showing Of Obviousness.

During patent examination, the USPTO bears the initial burden of presenting a prima facie case of unpatentability. *In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002); *cf. In re Piasecki*, 745 F.2d 1468, 1471-72 (Fed. Cir. 1984). A prima facie case is defined generally as: "Evidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted is sufficient to sustain a judgment in favor of 2 the issue which it supports, but which may be contradicted by other evidence...." *Blacks Law Dictionary*, 1189-90 (6th ed., West 1990). Obviousness is a question of law based on underlying factual inquiries. In putting forth a prima facie case, the USPTO serves as a fact finder and makes what are known as three *Graham* factual inquiries.

The first step in the *Graham* obviousness analysis is to determine the scope and content of the prior art. The prior art includes patents and printed publications having effective dates prior to the date of invention of the patent at issue. The scope of the prior art includes references that are "from the same field of endeavor, regardless of the problem addressed, [or] reasonably pertinent to the particular problem with which the inventor is involved." *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). See also *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966).

The second step of the *Graham* obviousness analysis is to determine the differences between the prior art and the claimed invention. This is performed by comparing the claimed invention to the prior art.

The third step is to determine the level of ordinary skill in the relevant art. The level of ordinary skill is determined from several factors, including the sophistication of the technology involved and the educational background of those active in the field. *Orthopedic Equipment Co. v. United States*, 702 F.2d 1005, 1011, 217 USPQ 193 (Fed. Cir. 1983); *Custom Accessories, Inc. v. Jeffrey-Allan Industries, Inc.*, 807 F.2d 955, 962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986); *see also In re GPAC Inc.*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995). The level of ordinary skill is used to determine whether, given the prior art, the invention as a whole would have been obvious at the time that it was made.

After the above three fact inquiries have been made, a legal determination of obviousness is made. According to the Federal Circuit, “[w]hat matters in the § 103 obviousness determination is whether a person of ordinary skill in the art, having all the teachings of the [prior art] references before him, is able to produce the structure defined by the claim.” *Orthopedic*, 702 F.2d at 1013, 217 USPQ at 200. While rejecting a rigid approach relating to a finding of a teaching, suggestion or motivation, the Supreme Court recently stated that “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

B. The Examiner Failed to Put Forth a Prima Facie Showing Of Obviousness.

a. The Cited References Lack Applicant’s Claim Elements

As mentioned above, the second step of the *Graham* obviousness analysis is to determine the differences between the prior art and the claimed invention. This is performed by comparing the claimed invention to the prior art. Here, the Examiner did not identify the currently pending claim elements and apply the references directly to them. For instance in claim 58, the Examiner failed to state which, if any, of the references comprise the claim elements of “assigning a separate and distinct color-coded outlet for selectively identifying each outlet of said power strip;

and assigning to each color-coded outlet a different color from any other such color-coded outlet”.

Instead, the Examiner inexplicably argues on page 3, paragraph 4 of the Office Action that the Barna reference “discloses a system and method using a color coded tag to tag a power cable of a device”, which is not currently claimed. It appears this section of the Office Action was cut and pasted from a previous, outdated Office Action and is not relevant. However, such action may be probative of the Examiner’s failure to give proper consideration to the currently pending claims.

In claim 63, Applicant has claimed:
a system comprising “a plurality of *unique* colored areas disposed on or proximate to each outlet. (Emphasis added). As acknowledged by the Examiner, Dwight’s hatching fails to represent color markings, and Applicant asserts that Barna fails to disclose separate and distinct, but otherwise identical A/C outlets, each with (unique) color code. As Barna’s figures 3, 4, and 5 clearly show, separate connection ports (20a and 20b) (or ‘outlets’ as used by the Examiner) use the same color code (44a).

Therefore, the argument that Barna discloses a distinct color code for each ‘outlet’ is not supported by the references. In fact, Barna’s use of the same color for multiple outlets shows that it not only fails to disclose Applicant’s claim element, but that it teaches away from this claim element.

On page 3 of the February 3, 2012 Final Office Action, the Examiner correctly acknowledges that the Dwight and Barna references fail to disclose the claim element of providing colored indicia adjacent to each color-coded outlet, wherein each indicium comprises a background color identical to its adjacent color-coded outlet. Here, the Examiner introduces the Moss reference to support the position that the remaining claim elements had been disclosed. In a nutshell, Moss combines colors and numbers to identify which wires are connected to which circuits in a distribution panel (See Moss at Figure 7).

The Examiner has not shown, nor could he, that Moss (or any other reference) discloses indicia identifying distinct devices that are assigned to distinct outlets. In Moss, identification of devices is not even discussed. Moss is limited to discussing wires that connect circuits, and does not identify which devices are plugged into any particular outlet.

The Examiner simply states that the elements claimed by Applicant “would have been obvious to one having ordinary skill in the art at the time of the invention” without even providing a perfunctory reason to support the contention. And again, the Examiner does not state which, if any, reference comprises the claim elements, or why additions to the references or combinations of the references would have been ‘obvious’.

Further, the Examiner failed to perform the third step in the obviousness analysis, as discussed above, by failing to determine the level of ordinary skill in the relevant art. Again, the level of ordinary skill is determined from several factors, including the sophistication of the technology involved and the educational background of those active in the field. *Orthopedic Equipment Co. v. United States*. The Examiner fails to make this analysis and, combined with the failure to even discuss the relevant claim elements, Applicant asserts that the Examiner has failed to make a prima facie showing of obviousness under Section 103.

The Examiner Admits That the Dwight Reference Fails to Disclose Color Markings

Additionally, claims 58-62 and 63-67 were rejected under 35 USC §103(a) as unpatentable over Dwight, (Des. 401,220) in view of Barna (5,775,935) and further in view of Moss 5,862,774. Applicant notes the Examiner’s admission that “Dwight is silent as to the hatching being a representation for color markings around the different AC outlets...” However, the Examiner then goes on to state on page 3 of the Office Action, without any accompanying support, that Barna would have made it “... obvious to one having ordinary skill in the art to have interpreted the hatching around the AC outlets as color markings... for selectively identifying one AC outlet from another...”. (Underlining added for emphasis). By speculating that one having ordinary skill in the art would have “interpreted the hatching...as color markings”, the Examiner has read into the cited references claim elements that he admits are not in those references. Again, no authority for that process is provided.

Further, the Barna reference doesn’t disclose A/C outlets. Even a glance at the drawings in Barna shows no A/C outlets, but instead a ‘transaction terminal’ with electrical ports, such as on a credit card terminal. See Barna column 4 line 15 “The transaction terminal illustrated is a credit card terminal”. And the only two electrical ports that are identical (20a and 20b) are identified by the same color markings (44a), are telephone jacks not A/C outlets, and have no

indicia to separately identify the device it's plugged into. In fact, Barna's use of the same color for multiple outlets shows that it not only fails to disclose Applicant's claim element, but that it teaches away from this claim element.

A 103(a) rejection presumes the existence of differences between the subject matter claimed and the teachings of prior art. Otherwise a rejection under 102 would have sufficed. Thus, the Examiner must be able to point to something that suggests in some way a modification of a particular reference in order to arrive at the claimed invention. "[T]he test is whether the combined teachings of the prior art, taken as a whole" suggest the modifications to the person of ordinary skill in the art. In re *Napier*, 55 F.3d 610 (Fed. Cir. 1995). See also *WMS Gaming, Inc., v. International Game Tech.*, 184 F.3d 1339, 1355 (Fed. Cir. 1999). There must be a basis for modifying a reference(s) either in the art or in other contemporaneous evidence, if the reference is otherwise silent on a claim element.

Absent such a showing, the Examiner has impermissibly used "hindsight" by using the Applicant's teaching as a blueprint to hunt through the prior art for the claimed elements and combine them as claimed. Such an approach would be "an illogical and inappropriate process by which to determine patentability" *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570 (Fed. Cir. 1996).

The present invention comprises a plurality of discrete and otherwise identical power outlets, with matching labels next to the outlets, as described in claims 58-63. The limitations that distinguish Claim 58 from Dwight, even in view of Barna, are as follows:

58. (Currently Amended) A method of preventing confusion in users of a multiple outlet power strip having several identical outlets for providing power to a plurality of devices, comprising the steps of:

1. assigning a separate and distinct color code to each outlet for selectively identifying each outlet of said power strip; and
2. assigning to each color-coded outlet a different color from any other such color-coded outlet; and

3. providing colored indicia adjacent to each color-coded outlet, wherein each indicia comprises a background color identical to its adjacent color-coded outlet.

The Examiner has not identified all of the currently pending claim elements and applied the references directly to them. For instance, the Office Action does not state which, if any, reference comprises the claim elements of 'assigning a separate and distinct color-coded outlet for selectively identifying each outlet of said power strip, and assigning to each color-coded outlet a different color from any other such color-coded outlet'.

Further, the Examiner has also failed to allege, in the method claims, that the references disclose the following claim elements, let alone point out where in the references they're disclosed:

Wherein each indicia identifies a peripheral device connected to the adjacent color-coded outlet (See claim 59);

wherein each indicia comprises a color-coded label identifying the peripheral device connected to the adjacent color-coded (See claim 60);

wherein each color-coded label comprises a unique identifier to identify a peripheral device (See claim 61);

wherein the unique identifier comprises one or more printed words and/or abbreviations thereof (See claim 62).

The Examiner also failed to point out how or where the cited references disclose the following claim elements:

An electrical power distribution system comprising:

a housing having a plurality of substantially identical AC power distribution outlets for providing AC electrical power to a plurality of peripheral devices connected thereto; and
a plurality of unique colored areas disposed on or proximate to each outlet, for identifying each outlet and the peripheral device connected to each outlet (See claim 63);

wherein each color-coded label comprises the same color as the adjacent colored area;
and identifies a peripheral device connected to the adjacent outlet (See claim 64);

wherein each color-coded label comprises a unique identifier to identify the peripheral device (See claim 65); and

wherein the unique identifier comprises one or more printed words and abbreviations thereof (See claim 66).

The Examiner correctly acknowledges that the Dwight and Barna references fail to disclose the claim element of providing colored indicia adjacent to each color-coded outlet, wherein each indicium comprises a background color identical to its adjacent color-coded outlet. Here, the Examiner introduces the Moss reference to support the position that the remaining claim elements had been disclosed. In a nutshell, Moss combines colors and numbers to identify which wires are connected to which circuits in a distribution panel.

The Examiner has not shown, nor could he, that Moss (or any other reference) discloses indicia identifying distinct devices that are assigned to distinct outlets. In Moss, device indicators are not even discussed. Moss is confined to wires connecting circuits and does not identify which devices are plugged into any particular outlet.

The Examiner simply states that the elements claimed by Applicant “would have been obvious to one having ordinary skill in the art at the time of the invention” without even providing a perfunctory reason to support the contention. And again, the Examiner does not state which, if any, reference comprises the claim elements, or why additions to the references or combinations of the references would have been ‘obvious’. Applicant asserts that the Examiner has failed to make a prima facie showing of obviousness under Section 103.

VIII. CONCLUSION

Accordingly, Claims 58-67, as submitted on November 29, 2011, encompass the full scope and breadth of the present invention. Therefore, reversal of the Final Office Action and allowance of the present application in light of this brief is respectfully requested. Pending

Claims 58-67 are believed to be fully supported by the specification, and are believed to be in allowable form. Favorable action is accordingly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'John E. Nielsen', with a stylized flourish at the end.

John E. Nielsen
Patent Reg. No. 53,392

JEN/lrf

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PENDING CLAIMS

58. (Currently Amended) A method of preventing confusion in users of a multiple outlet power strip having several identical outlets for providing power to a plurality of devices, comprising the steps of:

1. assigning a separate and distinct color-coded code to each outlet for selectively identifying each outlet of said power strip; and
2. assigning to each color-coded outlet a different color from any other such color-coded outlet; and
3. providing colored indicia adjacent to each color-coded outlet, wherein each indicia comprises a background color identical to its adjacent color-coded outlet.

59. (Previously Presented) The method, as recited in claim 58, wherein each indicia identifies a peripheral device connected to the adjacent color-coded outlet.

60. (Previously Presented) The method, as recited in claim 58, wherein each indicia comprises a color-coded label identifying the peripheral device connected to the adjacent color-coded.

61. (Previously Presented) The method, as recited in claim 58, wherein each color-coded label comprises a unique identifier to identify a peripheral device.

62. (Previously Presented) A method, as recited in claim 58, wherein the unique identifier comprises one or more printed words and/or abbreviations thereof.

63. (Previously Presented) An electrical power distribution system comprising:

- a. a housing having a plurality of substantially identical AC power distribution outlets for providing AC electrical power to a plurality of peripheral devices connected thereto; and
- b. a plurality of unique colored areas disposed on or proximate to each outlet, for identifying each outlet and the peripheral device connected to each outlet.

64. (Previously Presented) The electrical power distribution system of claim 63, further comprising:

- a. a plurality of color-coded labels located adjacent to the outlets, wherein each color-coded label:
 1. comprises the same color as the adjacent colored area; and
 2. identifies a peripheral device connected to the adjacent outlet.

65. (Previously Presented) The electrical power distribution system of claim 64 wherein each color-coded label comprises a unique identifier to identify the peripheral device.

66. (Previously Presented) The electrical power distribution system of claim 65 wherein the unique identifier comprises one or more printed words and abbreviations thereof.

67. (Previously Presented) The AC electrical power distribution system as recited in claim 66 further comprising overcurrent and noise protection elements.